

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ACUITAS CAPITAL, LLC,

Plaintiff,

-against-

IDEANOMICS, INC.,

Defendant.

23 Civ. 02124 (PAE)

ORDER GRANTING PRELIMINARY INJUNCTION

PAUL A. ENGELMAYER, District Judge:

On March 31, 2023, the Court held a hearing on the motion of Plaintiff Acuitas Capital, LLC (“Acuitas Capital”) for a preliminary injunction and preliminary declarative relief pursuant to Federal Rule of Civil Procedure 65 and 28 U.S.C. § 2201 (the “Preliminary Injunction Motion”).

The Court has reviewed Acuitas Capital’s Complaint (ECF No. 1); Acuitas Capital’s Order to Show Cause (ECF No. 5); Acuitas Capital’s Memorandum of Law in Support of the Preliminary Injunction Motion (ECF No. 6); the Declarations of Terren Peizer, Michael Wachs, and Andrew B. Kratenstein, each dated March 13, 2023, and the exhibits attached thereto (ECF Nos. 7–9); Defendant Ideanomics, Inc.’s (“Ideanomics”) Memorandum of Law in Opposition to the Preliminary Injunction Motion (ECF No. 28); the Declarations of Larry Rong, Alfred Poor, Paula Whitten-Doolin, and Barry Bordetsky, each dated March 24, 2023, and the exhibits attached thereto (ECF Nos. 20–27); Acuitas Capital’s

Reply Memorandum of Law in Support of the Preliminary Injunction Motion (ECF No. 30); the Reply Declarations of Michael Wachs and Andrew B. Kratenstein, each dated March 28, 2023, and the exhibits attached thereto (ECF Nos. 31–32); the letter from counsel for Acuitas Capital to the Court, dated March 30, 2023, and the exhibit attached thereto (ECF No. 34); Ideanomics’s response to the letter, dated March 31, 2023, and the exhibit attached thereto (ECF No. 40); and the argument presented by the parties during the hearing held on March 31, 2023.

For the reasons stated on the record of the hearing, IT IS HEREBY ORDERED that:

1. Acuitas Capital’s Preliminary Injunction Motion is granted;
2. Ideanomics shall deliver to Acuitas Capital within one (1) business day of this Order (a) 4,901,960 registered common shares of Ideanomics stock pursuant to Acuitas Capital’s Conversion Notice, dated March 3, 2023, and (b) 7,974,481 registered common shares of Ideanomics stock pursuant to Acuitas Capital’s Exercise Notice, dated March 6, 2023;
3. Ideanomics shall honor within one (1) business day Acuitas Capital’s future conversions of the Preferred Stock and exercises of the Warrants that Acuitas Capital acquired from Ideanomics pursuant to the parties’ Securities Purchase Agreement, dated as of November 14, 2022 (the “SPA”),¹ and pursuant to the terms of the SPA;
4. Through and including May 2, 2023, Ideanomics shall not, without the prior written consent of Acuitas Capital, offer, pledge, sell, contract to sell, sell any option or

¹ Unless otherwise indicated, all capitalized terms herein shall have the meaning ascribed to them in the SPA.

contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of capital stock of Ideanomics or any securities convertible into or exercisable or exchangeable for shares of capital stock of Ideanomics, provided, however, that if the trading price of Ideanomics Common Stock is at least 20% greater than the conversion price of the Preferred Stock, Ideanomics shall have the right to utilize the Standby Equity Purchase Agreement agreed between Ideanomics and YA II PN in August of 2022 to sell up to 3% of the outstanding volume of Ideanomics' Common Stock.


5. Ideanomics shall comply with all other terms of the SPA, including, without limitation, the SPA's requirement in Section 3(c) that Ideanomics shall have reserved from its duly authorized capital stock not less than the sum of (i) 250% of the maximum number of Conversion Shares issuable upon conversion of the Purchase Shares (without taking into account any limitations on the conversion of the Purchase Shares set forth in the Amended and Restated Articles of Incorporation) and (ii) 250% of the maximum number of Warrant Shares issuable upon exercise of the Warrants (without taking into account any limitations on the exercise of the Warrants set forth therein).

6. Pending further briefing as to the legality of such sale(s), and an ensuing court order, Ideanomics shall hold in escrow, and not dissipate, the proceeds of its sale(s), to YA, of Ideanomics common stock on or after March 7, 2023. Insofar as the parties have sought or may seek additional relief or modification of this Order, the Court directs counsel to meet and confer forthwith on any such matters, and schedules a hearing for Friday, April 7, 2023, at 11 a.m., in Courtroom 1305 of the Thurgood Marshall United States Courthouse. Any

applications for relief are due Tuesday, April 4, 2023, at noon. Any responses are due Wednesday, April 5, 2023 at 5 p.m.

7. Acuitas Capital shall not be required to post a bond. However, Acuitas Capital shall hold any proceeds from its future sale of Ideanomics stock obtained pursuant to the SPA in escrow *pendente lite*.

SO ORDERED.


HON. PAUL A. ENGELMAYER
UNITED STATES DISTRICT COURT JUDGE

Dated: March 31, 2023
New York, New York